

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-4146

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENYATA DEMORIS ROBINSON, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Chief District Judge. (CR-00-304)

Submitted: August 31, 2001

Decided: October 15, 2001

Before NIEMEYER and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Louis C. Allen, III, Federal Public Defender, John A. Dusenbury, Jr., Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Benjamin H. White, Jr., United States Attorney, Sandra J. Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Kenyata Demoris Robinson appeals from his two convictions for possession with intent to distribute cocaine base "crack" and sentence of 211 months imprisonment. Robinson alleges that his jury instructions were erroneous in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). For the reasons that follow, we affirm.

We first note that because Robinson was sentenced within the statutory maximum, his convictions are unaffected by the Apprendi opinion. Apprendi, 530 U.S. at 490; see United States v. Kinter, 235 F.3d 192, 199-200 (4th Cir. 2000) (Apprendi does not apply to a judge's exercise of sentencing discretion within a statutory range so long as a defendant's sentence is not set beyond the maximum term specified in the substantive statute), cert. denied, 121 S. Ct. 1393 (2001). Second, we find that the jury was properly charged to find drug amounts, in any event. United States v. Richardson, 233 F.3d 223, 231 (4th Cir. 2000), petition for cert. filed (Mar. 19, 2001) (No. 00-9234). Accordingly, we affirm Robinson's convictions and sentence.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED